IN THE MATTER OF ANSHE EMUNAH-AITZ CHAIM - TIFERETH ISREAL CONGREGATION, INC. – LEGAL OWNER AND FISHES DISHES, INC. – TENANT 7000 ROCKLAND HILLS DRIVE BALTIMORE, MD 21209	*	BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY
Appeal of Citation No. CC2215126	*	Case No.: CBA-23-028

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OPINION

This case comes before the Baltimore County Board of Appeals ("Board") as an appeal of Baltimore County Administrative Law Judge ("ALJ") Maureen Murphy's May 8, 2023, Opinion and Order finding that Anshe Emunah-Aitz Chaim-Tifereth Isreal Congregation, Inc. and Fishes Dishes, Inc (Appellants) were in violation of several sections of the Baltimore County Zoning Regulations (BCZR) as alleged Civil Citation number CC2215126. The specific violations alleged in the citation were: (1) operation of a non-permitted class II trucking facility (BCZR § 410); (2) improper parking of illegal commercial vehicles (BCZR § 431): and (3) violation of the commercial site plan (BCZR §500.9 and Baltimore County Code (BCC) § 32-3-102). Judge Murphy imposed a $3,500.00 civil fine. Appellants noted a timely appeal to the Board.

A hearing on the record was held before this Board on July 18, 2023, via Webex. Appellants were represented by Dino C. La Fiandra, Esquire. The County was represented by Marissa Merrick, Esquire, Assistant County Attorney. On August 4, 2023, counsel submitted Memoranda in lieu of closing arguments.

LEGAL STANDARD

For an appeal of a citation, the Board's standard of review is governed by BCC § 3-6-304 which states, in pertinent part:

> (a) Disposition options. In a proceeding under this subtitle, the Board of Appeals may:
> (1) Remand the case to the Hearing Officer;
> (2) Affirm the final order of the Hearing Officer; or
> (3) Reverse or modify the final order if a finding, conclusion, or decision of the Code Official, the Director, or the Hearing Officer:
> (i) Exceeds the statutory authority or jurisdiction of the Code Official, the Director, or the Hearing Officer;
> (ii) Results from an unlawful procedure;
> (iii) Is affected by any other error of law;
> (iv) Subject to subsection (b) of this section, is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or
> (v) Is arbitrary or capricious.

From our review of the record, subsections (3)(iii) and (iv) are the operative provisions in this matter. In other words, did the ALJ make a finding that was not supported by "substantial evidence in the record as a whole" and/or was the ALJ's conclusion "premised upon an erroneous conclusion of law." (*United Parcel Service v. People's Counsel for Baltimore County*, 336 Md. 569, 576-77 (1994).) Each count of the citation must be examined with that standard in mind.

I. THE EVIDENCE WAS INSUFFICIENT TO SUPPORT A FINDING OF A TRUCKING FACILITY, CLASS II.

The definition of a Trucking Facility, Class II is found in BCZR § 101.1. That definition provides, in pertinent part, that to be such a facility, there must be "a structure or land used or intended to be used primarily. . . for truck or truck-trailer parking or storage". Importantly, if the structure or land is used for parking trucks or storage of trucks as part of an accessory use to a lawful principal use, then the structure or land is not a trucking facility.

The evidence in the record established without any doubt that the primary use of the property is that of a Jewish synagogue. That synagogue operates a kosher kitchen and supplies limited kosher meals offsite as an accessory use. That accessory use was approved in the prior zoning case denoted as 2008-0446-SPH. (Appellant's Exhibit 5.) The kosher meal preparation and delivery is operated by Fishes Dishes, Inc., a tenant of the synagogue. Jeffrey L. Forman, Esquire, who had presented the zoning case on behalf of the synagogue in 2008, testified that there had been no expansion of the of the kosher meal preparation activity since the 2008 approval. Code Enforcement Officer Manny Giorgakis did not testify that any aspect of the 2008 case had been violated. A neighbor, Daniel Appleby testified that there had been some trucks parked at the edge of the synagogue property adjacent to his property, but those trucks have been moved. As a result, he no longer had any complaint about the activities at the synagogue. He provided no testimony to support the finding that the kosher meal operation had grown since 2008.

The only conceivable evidence, and presumably what the ALJ relied upon,[1] are photographs that depicted what the ALJ apparently concluded were too many trucks on the property. She also adopted a particularly narrow interpretation of the 2008 zoning opinion. While those photographs might raise a concern about the present scope of the Fishes Dishes

[1] BCC § 3-6-206(g) requires the ALJ in a code enforcement case to ". . .issue a final order with written findings. . .". Here, the Order that the ALJ issued simply indicated that it was finding the Appellants liable for the reasons stated at the hearing. We understand that the volume of citation cases before the ALJs makes the issuance of formal written findings difficult, if not downright onerous. We also recognize that the vast majority of citation cases are not appealed so the absence of actual written findings is of no moment. Where there is an appeal, however, and where there is no specific set of findings made by the ALJ, appellate review is more difficult. The Board is forced to garner the "findings" from the statements by the ALJ even when those statements are not explicitly couched as findings of fact. In this matter, for instance, much of the ALJ's thinking is reflected in its rather freewheeling and somewhat contentious discourse with Mr. Forman. We do not intend these remarks as a criticism of the ALJ. Rather, we make this observation simply to explain why our discussion of the ALJ's "findings" has required us to interpret the ALJ's words to glean the actual findings.

operation, the evidence presented by photographs taken at isolated times is clearly not enough in and of itself to show that the operation is different from or bigger than it was in 2008. No matter how one presently construes the sense of a fifteen year old opinion, without some concrete demonstration connecting the number of trucks to an actual measurement of even the slightest growth of activity from 2008 to 2023 and no matter how suspicious the ALJ may be, the evidence is simply deficient as a matter of law.[2]

II. THE EVIDENCE WAS INSUFFICIENT TO SUPPORT A FINDING OF THE IMPROPER PARKING OF COMMERCIAL VEHICLES ON A RESIDENTIAL LOT, AND IN ANY CASE, THE PROHIBITION AGAINST SAID PARKING DID NOT APPLY AS A MATTER OF LAW.

BCZR § 431 applies to the parking of commercial vehicles on residential property. This provision permits the parking of only one commercial vehicle on a residential lot, subject to certain limitations. Initially, it must be noted that § 431 only applies to **principal** uses, not accessory uses. (*See* BCZR § B400.) As indicated above, the principal use here is as a house of worship. The catering is an accessory use. The ALJ seemed to conclude that the religious functions and the catering were now "co-principal uses". She based this conclusion on the same (unsupported) finding that underlies her finding on the trucking facility question: that the catering use had grown from an accessory to a principal use. For the reasons already stated, this is a factual conclusion that is not supported by the actual evidence presented at the hearing. Accordingly, the § 431 allegation cannot stand as a matter of law.

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[2] To the extent that the ALJ relied on the two storage containers to support her finding, that reliance is misplaced. The evidence is overwhelming that the two storage containers in question are not being used as storage containers. The containers are not being loaded and unloaded, stacked or placed onto trailer beds for movement to other locations, and then being returned with more supplies to be unloaded. They are nothing more than unsightly permanent sheds (which the synagogue should remodel to be more aesthetically pleasing or replace with actual sheds).

There is a second legal impediment to the application of § 431 in this instance. Section 431 by its terms applies to "residential lots". The synagogue is in a residential zone, but the specific use is commercial. The ALJ, of necessity, concluded that the term "residential lot" in § 431 means precisely the same as "zoned residential". This cannot be justified because it would mean that any commercial entity or school or religious facility permitted in a residential zone could not maintain more than one commercial vehicle on its premises. This is unduly restrictive on its face and leads to the conclusion that "residential lot" does not include a lot used for non-residential purposes in a residential zone. Therefore, the ALJ's conclusion that § 431 applies is an error of law.

In addition, the limitations listed in § 431 were not disproven. In order to violate § 431, it must be shown that the trucks are over 10,000 pounds and that the trucks were parked for a time exceeding their actual use on the premises. There were no facts presented as to the truck poundage nor to the length of time that the trucks were there, other than the photographs from one day. Though it may seem hyper-technical to require proof of poundage and duration of parking, these are nonetheless requirements under § 431 and must be satisfactorily proven. Accordingly, even if § 431 does apply there was a failure of proof that § 431 was violated.

III. THE EVIDENCE WAS INSUFFICIENT TO SUPPORT A FINDING THAT THERE WAS A VIOLATION OF THE COMMERCIAL SITE PLAN AND/OR A ZONING ORDER.

The citation also alleged violations of BCC § 32-3-102 and BCZR § 500.9. As the Appellants note, § 32-3-101 simply authorizes the Director of Permits, Approvals, and Inspections to interpret and enforce the zoning regulations. BCZR § 500.9 enables an ALJ to compel production of site plans in the context of zoning cases. Neither provision creates rules

by which ordinary citizens must abide. These provisions do not contain any standards, prohibitions, or restrictions that can be applied *per se* and then enforced by civil citation. Thus, as a matter of law, those provisions do not proscribe any specific behavior of which the Appellants can be guilty.

Additionally, as a factual matter, the remarks of the ALJ (and the arguments of the Assistant County Attorney at our hearing) appear to be based on the two storage containers referred to above. At the time the site plan was created, the space now occupied by those storage containers was occupied by two sheds, and those sheds were reflected on the site plan. Again, as described above, the two storage containers now function as sheds. It is not reasonable to say that because the present functional sheds are different in style than the original sheds, there is a site plan violation where the present storage units are in the same location and perform the same function as the original sheds from 2008. So, even if the citation properly alleged a site plan violation, no such violation was established on the evidence presented.

CONCLUSION

For the reasons stated herein, the Board hereby reverses the finding that the Appellants were in violation of any of the allegations listed in Citation No. CC2215126.

ORDER

THEREFORE, IT IS THIS 21st day of August 2023, by the Board of Appeals of Baltimore County:

ORDERED that the Order of the Administrative Law Judge dated May 8, 2023, in Citation No. CC2215126, finding Appellants liable for the violations listed in said Citation be, and the same hereby is, **REVERSED**.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through 7-210 of the *Maryland Rules*.

BOARD OF APPEALS OF
BALTIMORE COUNTY

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Fred M. Lauer

Michael J. Stelmack

Board of Appeals of Baltimore County

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August 21, 2023

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RE: In the Matter of: *Anshe Emunah-Aitz Chaim –*
Tifereth Israel Congregation, Inc. – Legal Owner
Fishes Dishes, Inc. - Tenant
Case No.: CBA-23-028

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Sunny Cannington Hay

Krysundra "Sunny" Cannington
Legal Administrative Secretary

KLC/taz
Enclosure
Duplicate Original Cover Letter

c: Anshe Emunah-Aitz Chaim – Tifereth Isreal Congregation, Inc.
Simcha and Phillip Gross/Fishes Dishes, Inc.
Paul M. Mayhew, Managing Administrative Law Judge
Adam Whitlock, Chief of Code Enforcement/PAI
C. Pete Gutwald, Director/PAI
James R. Benjamin, Jr., County Attorney/Office of Law
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